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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 JESUS HECTOR PALMA-SALAZAR,

15 Defendant.
16

CASE NO. 95CR2153-LAB

**ORDER DENYING MOTION TO
REDUCE SENTENCE PURSUANT TO
18 U.S.C. § 3582; USSG 1B1.10**

17 **Preliminary Statement**

18 About a year ago, Amendment 782 to the United States Sentencing Guidelines
19 ("Guidelines" or "USSG") went into effect. That Amendment lowered the sentencing ranges
20 for most federal drug offenses by 2 levels, while another Amendment to the Guidelines made
21 the changes retroactive. See Amendment 788 (amending Guidelines § 1B1.10). The
22 reduced sentencing ranges are significant to Jesus Hector Palma-Salazar who in 2008 pled
23 guilty to a federal drug charge and was sentenced to 192 months in custody. At that time,
24 his Guideline sentencing range was 168-210 months. Under the lower sentencing range
25 effected by Amendment 782, he faces only 135-168 months. Palma-Salazar has filed a
26 motion to reduce his sentence, as is authorized by 18 U.S.C. § 3582(c)(2). The Government
27 concedes that he is eligible for a sentence reduction, but urges the Court not to grant one

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1 because, it contends, Palma-Salazar was a big time player in a notorious Mexican drug
2 cartel.

3 A court must follow two steps in considering a motion to reduce a sentence under
4 § 3582(c)(2). First, it must determine whether a defendant is eligible for a sentence reduction
5 under the Sentencing Commission's policy statement in USSG § 1B1.10. Second, it must
6 "consider any applicable § 3553(a) factors and determine whether, in its discretion, the
7 reduction authorized by reference to the policies relevant at step one is warranted in whole
8 or in part under the particular circumstances of the case. *United States v. Dunn*, 728 F.3d
9 1151, 1155 (9th Cir. 2013).

10 Palma-Salazar is eligible to have his sentence reduced. With the 2 level reduction
11 authorized by Amendment 782, his amended Guidelines range is roughly 2 to 5 years lower
12 than his original sentencing range. And because the low end of the amended range is less
13 than his original sentence of 192 months, Palma-Salazar's sentence *could* be cut to 135
14 months. See USSG § 1B1.10(b)(2)(A). However, he requests a more modest reduction to
15 168 months.

16 But eligibility for a sentence reduction is not the same as entitlement to one. Both
17 § 1B1.10(b)(2) and § 3582(c)(2) describe the prerogative to reduce a sentence in permissive
18 terms (the court "may" reduce the sentence if the defendant is eligible), and the Supreme
19 Court and the Ninth Circuit have characterized the decision as "discretionary." See *Dillon v.*
20 *United States*, 560 U.S. 817, 827 (2010) ("At step two of the inquiry, § 3582(c)(2) instructs
21 a court to consider any applicable § 3553(a) factors and determine whether, *in its discretion*,
22 the reduction authorized by reference to the policies relevant at step one is warranted in
23 whole or in part . . .") (italics added); *United States v. Colson*, 573 F.3d 915, 915-16 (9th Cir.
24 2009) (referring to the district court's *discretionary* denial of the defendant's 18 U.S.C.
25 § 3582(c)(2) sentence reduction motion). So the question for the Court here is whether the
26 facts and circumstances of Palma-Salazar's offense, his background, and other relevant
27 § 3553(a) factors equitably support reducing his sentence.

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1 **§ 3553(a) Analysis**

2 Palma-Salazar's 2008 drug charge was resolved by a plea agreement. The
3 agreement included a joint recommendation by the Government and Palma-Salazar for a
4 192-month sentence. Apparently confident that the Court would follow that recommendation,
5 the parties waived a probation report and requested immediate sentencing. A bare bones
6 probation report – one that turned out to be only 3 pages long – was later prepared. The
7 report only summarily described the offense, and contained nothing about Palma-Salazar's
8 background or his criminal history in Mexico. It did not discuss, for example, the length and
9 nature of Palma-Salazar's ties to Mexican drug trafficking. Because there was no opportunity
10 to interview the defendant, the report didn't include a personal statement from him or any
11 explanation of his conduct. The skimpy, after-the-fact probation report has made the Court's
12 § 3553(a) analysis more difficult.

13 The Government's Opposition to the § 3582(c) Motion includes additional facts about
14 Palma-Salazar's criminal activity, his background, and his criminal history. In it, the
15 Government refers to a Bill of Particulars that was filed in the underlying case and to an
16 affidavit submitted by Assistant U.S. Attorney Todd Robinson in connection with the
17 Government's successful effort to extradite Palma-Salazar from Mexico. The Court has
18 reviewed both of these documents.

19 The Bill of Particulars tells the following story. As early as 1988, Palma-Salazar was
20 part of a drug organization that imported large quantities of cocaine into the United States.
21 For example, in February, 1988, he helped transport 1,420 kilograms of cocaine from
22 Colombia to Mexico as a first step in smuggling the cocaine into the U.S. This wasn't a one-
23 time venture. Between 1988 and 1990, Palma-Salazar and others arranged for 160 plane
24 loads of cocaine to be brought from Colombia into Mexico, with each load ranging from
25 1,000 to 1,400 kilograms, and all destined for importation into the U.S.

26 Palma-Salazar also directly imported cocaine into the United States. According to the
27 Bill of Particulars, between 1991 and 1993, he and others smuggled 25 *tons* of cocaine
28 packed in chili cans into this country. On one particular date, October 26, 1992, they

1 delivered 160 kilograms of cocaine to customers in Pomona, California. Four months later,
2 the defendant and others tried to import another 227 kilograms of cocaine, but that load was
3 intercepted and seized. The seizure proved to be only a temporary setback; Palma-Salazar
4 continued to smuggle even larger quantities of cocaine across the border. For example, on
5 April 21, 1993, he tried to smuggle 7.3 *tons* of cocaine through the Tecate Port of Entry.
6 That load was also seized, as was another 390-kilo load destined for Chicago.¹ Still another
7 8-ton load was seized on November 15, 1994. Despite these significant drug seizures,
8 Palma-Salazar eventually succeeded in smuggling ten *tons* of cocaine into the U.S. during
9 1995.

10 Mr. Robinson's affidavit picks up where the Bill of Particulars leaves off. It alleges that
11 Palma-Salazar was part of the Sinaloa cartel headed by El Chapo Guzman, which has been
12 described as the "biggest drug-trafficking organization in history. . . ." See, Patrick Radden
13 Keefe, "The Hunt for El Chapo," THE NEW YORKER (May 5, 2014), *available at*
14 <http://www.newyorker.com/magazine/2014/05/05/the-hunt-for-el-chapo>. According to the
15 affidavit, a reliable informant, whose testimony led to the convictions of two other Sinaloa
16 cartel members, fingered Palma-Salazar in connection with the 390-kilogram cocaine load
17 that was seized in Chicago in 1994. The informant's tip was corroborated by information from
18 a court authorized wiretap.

19 A second informant reported that Palma-Salazar also trafficked drugs for the uncle
20 of the Arellano-Felix brothers – four infamous brothers who headed a different drug cartel
21 that operated for decades along the Tijuana-San Diego corridor. After a falling out with the
22 uncle, Palma-Salazar wrested control over the drug trafficking trade in Tepic, the largest city
23 in the state of Nayarit, Mexico. According to this informant, while the defendant "controlled
24 Tepic," he managed to ship "multiple-ton quantities of cocaine from Mexico into the United
25 States until he was arrested following a plane crash in June of 1995."

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28 ¹ Palma-Salazar admitted his involvement in the Chicago drug smuggling venture as part of
his guilty plea in this case.

1 The fact of Palma-Salazar's plane crash and arrest by Mexican authorities is
2 substantiated in the Government's Opposition to the § 3582(c) Motion. The Government
3 alleges – and Palma-Salazar doesn't dispute – that Mexican law enforcement arrested him
4 in 1995 after he crashed his private plane. Palma-Salazar remained in Mexican custody for
5 11 years. He was eventually tried and convicted of bribing Mexican officials to facilitate the
6 escape of another member of the Sinaloa cartel. In 2007, the Mexican Government
7 extradited him to the United States.

8 Counsel for Palma-Salazar has offered the following equities in support of a sentence
9 reduction. Palma-Salazar is now 55 years old. In the past and while in custody, he suffered
10 excruciating pain from a hernia. Surgery eventually fixed the problem. Between the time he
11 was sentenced in 2007 and December 2013, Mr. Palma-Salazar was held at the
12 Administrative Maximum Facility (“ADX”) in Florence, Colorado. ADX is known as a
13 “supermax” prison that houses inmates who have been deemed too dangerous, too
14 high-profile, or too great a national security risk for even a maximum-security prison. While
15 in ADX, Palma-Salazar was kept in solitary confinement 23 hours per day, and was not
16 permitted to come into contact with other prisoners at any time. In December 2013, he was
17 transferred to the United States Penitentiary, also located in Florence, Colorado. He is now
18 housed among the general inmate population where he can interact with other prisoners.
19 According to counsel, Palma-Salazar no longer poses a threat to public safety. The
20 defendant plans to reunite with his wife and children in Mexico once he completes his
21 sentence and is deported.

22 In ruling on Mr. Palma-Salazar's § 3582(c)(2) Motion, the Court is required to consider
23 and discuss all relevant § 3553(a) factors. *United States v. Trujillo*, 713 F.3d 1003, 1009 (9th
24 Cir. 2013). They include: the nature and circumstances of the offense and the history and
25 characteristics of the defendant; the purposes of sentencing; the kinds of sentences
26 available; the sentences and ranges established by the Sentencing Guidelines; relevant
27 policy statements issued by the Sentencing Commission; the need to avoid unwarranted
28 sentencing disparities among similarly situated defendants; and the need to provide

1 restitution to victims. The Court has considered these factors, and concludes for reasons
2 outlined below that the defendant's sentence should not be reduced.

3 For at least seven years before his arrest by Mexican police, Mr. Palma-Salazar was
4 actively involved at a managerial level with two major drug trafficking organizations. Those
5 cartels were responsible for importing gigantic quantities of cocaine into the United States.
6 Some of the drug loads were intercepted, but many made it in. In 1995 alone, the defendant
7 helped import more than 10 *tons* of cocaine into the United States. Under § 3553(a)(1), the
8 Court finds Mr. Palma-Salazar's criminal activity was much more extensive and serious than
9 what is involved in the typical narcotics conspiracy or narcotics importation case. The huge
10 amount of highly-addictive, destructive drugs he imported into this country – and the dismal
11 tide of ill effects those drugs caused; the lengthy duration of his managerial oversight and
12 control of the drug trafficking organizations with which he was affiliated; and his conviction
13 for bribing Mexican officials to facilitate the escape of another leader of the Sinaloa drug
14 cartel are all aggravating factors. Palma-Salazar's original sentence reflected the
15 seriousness of his offense, and was proportionate to the harm that he caused. The original
16 sentence served the objectives of providing just punishment for his offenses and promoting
17 respect for the law, § 3553(a)(2)(A); and deterring him from involvement in ongoing criminal
18 activity, § 3553(a)(2)(B).

19 The Court has also considered the kinds of sentences available and the need to
20 avoid unwarranted sentencing disparities. When he was sentenced in 2008, Palma-Salazar
21 faced a statutory maximum penalty of life in prison. His original Guidelines sentencing
22 range, while advisory in nature, had the effect of reducing his exposure to less than half of
23 the maximum sentence.² Although the Court could have initially sentenced Palma-Salazar
24 to 168 months – the low end of his original Guideline sentencing range – it chose not to after
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26 ² The U.S. Sentencing Commission assigns a value of 470 months (39 years and two months)
27 to sentences of life imprisonment for any statistical analysis in which a term of months is required.
28 See U.S. SENT. COMM'N., 2013 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS S-170
(2014). This sentence length is consistent with the average life expectancy of federal criminal
offenders. *Id.* Palma-Salazar's original advisory Guideline range was 168-210 months, which even
at the high end was less than half of the statutory maximum for the offense.

1 analyzing the § 3553(a) factors. The Court's analysis has not changed over time, even
 2 though the sentencing range has. In other words, the same aggravating factors that led the
 3 Court to impose a 192-month sentence in 2008 persuade the Court that the sentence is
 4 reasonable and should not be reduced.³

5 The Court also concludes that Palma-Salazar's sentence is not disparate in
 6 comparison to other major drug defendants whom this Court has sentenced. Among these
 7 similar defendants are many members of the Arellano-Felix drug cartel. This Court
 8 sentenced most, if not all, of the Arellano-Felix defendants who had managerial authority
 9 over the cartel's drug trafficking operations to prison terms exceeding 192 months. See, e.g.,
 10 *United States v. Gilberto Higuera-Guerrero*, 2015 U.S. Dist. LEXIS 86706, at *11 (S.D. Cal.
 11 July 2, 2015) (second-level lieutenant in Arellano-Felix drug cartel originally sentenced to
 12 360 months; sentence reduced to 240 months pursuant to Fed. R. Crim. P. 35(b)); *United*
 13 *States v. Ismael Higuera-Guerrero*, U.S. Dist. LEXIS 104024, *1, 11 (S.D. Cal. June 26,
 14 2015) (top lieutenant in Arellano-Felix drug cartel originally sentenced to 480 months;
 15 sentence reduced to 300 months pursuant to Fed. R. Crim. P. 35(b)); *United States v.*
 16 *Francisco Javier Arellano-Felix*, 2015 U.S. Dist. LEXIS 77247, at *2-3 (S.D. Cal. June 15,
 17 2015) (drug kingpin originally sentenced to life; sentence reduced to 282 months pursuant
 18 to Fed. R. Crim. P. 35(b)). While it's possible to identify differences between Palma-Salazar
 19 and the Arellano-Felix defendants, the Court considers his criminal culpability to be
 20 comparable to theirs.

21 Turning to the equities presented by Palma-Salazar, the Court acknowledges that his
 22 conditions of confinement were initially harsh, but that situation has changed with his
 23 transfer to a different prison where he is now part of the main-line population. Besides,
 24 prison, by definition, is a bad place to be, see *Arellano-Felix*, *supra*, at *15-16, and the Court
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 27 ³ The Court acknowledges that it is not permitted to engage in a de novo resentencing in a
 28 § 3582(c)(2) proceeding, USSG. § 1B1.10(a)(3), p.s. ("[P]roceedings under § 3582(c)(2) and this
 policy statement do not constitute a full resentencing of the defendant."), and is not doing so here.
 Instead, the Court is merely reevaluating the relevant § 3553(a) factors, including the lower Guideline
 sentencing range, to determine whether a sentence reduction is warranted.

1 is reluctant to place too much emphasis on conditions of confinement as a justification for
2 lowering the sentence of a major drug trafficker.

3 That Palma-Salazar was successfully treated in the past for a painful hernia likewise
4 does not move the needle. For one thing, there is nothing to suggest that his hernia had
5 anything to do with his incarceration as opposed to, for example, his age. See, e.g., U.S.
6 DEPT. OF HEALTH, EDUCATION & WELFARE, HEALTH STATISTICS FROM THE U.S. NATIONAL HEALTH
7 SURVEY, HERNIAS REPORTED IN INTERVIEWS, UNITED STATES JULY 1957- JUNE 1959 (1960), at
8 2, available at http://www.cdc.gov/nchs/data/public_health/SeriesB_25.pdf (documenting
9 relationship between advancing age and increased risk of hernias). Whatever the origin of
10 his medical problem, Palma-Salazar's hernia was successfully treated by the Bureau of
11 Prisons and therefore doesn't pose an ongoing concern or justification for reducing his
12 sentence.

13 Finally, the Court is considerably less sanguine than Palma-Salazar's counsel that
14 the defendant "no longer poses a threat to public safety." While he will certainly be deported
15 once he completes his sentence, his removal to Mexico is hardly a guarantee against
16 recidivism. The epicenter of Palma-Salazar's long term drug trafficking activity was Mexico,
17 where he worked for the Sinaloa cartel. The news media recently reported that El Chapo
18 Guzman, the head of the Sinaloa cartel, escaped from prison and is believed to be at large
19 in Mexico. *Joaquin 'El Chapo' Guzman: U.S. Offers Reward for Escaped Drug Kingpin*,
20 Associated Press, Aug. 6, 2015, available at [http://www.nbcnews.com/news/world/joaquin-](http://www.nbcnews.com/news/world/joaquin-el-chapo-guzman-u-s-offers-reward-escaped-drug-n404991)
21 [el-chapo-guzman-u-s-offers-reward-escaped-drug-n404991](http://www.nbcnews.com/news/world/joaquin-el-chapo-guzman-u-s-offers-reward-escaped-drug-n404991). The media also reported that
22 Guzman has an estimated net worth of about \$1 billion. *Id.* If true, this information tends to
23 increase, rather than diminish, the risk that Palma-Salazar will be tempted to pick up where
24 he left off. Under § 3553(a)(2)(C), the Court concludes that reducing the defendant's original
25 sentence is antithetical to the goal of protecting the public against his possible further
26 crimes.

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1 **Conclusion**

2 For the above reasons, Palma-Salazar's motion to reduce his sentence pursuant to
3 Amendment 782 and 18 U.S.C. § 3582(c)(2) is **DENIED**.

4 **IT IS SO ORDERED.**

5 DATED: 8-10-15



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7 **HONORABLE LARRY ALAN BURNS**
8 United States District Judge
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